

Notice of Allowability

Application No.

10/018,964

Examiner

Sheridan L. Swope

Applicant(s)

PATERSON ET AL.

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amdt of March 29, 2006.
2. ☒ The allowed claim(s) is/are 1,3-5 and 9.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 0106;0306
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Applicant's response, on January 18, 2006 and March 29, 2006, to the Action on the Merits of this case mailed October 18, 2005, is acknowledged. It is acknowledged that Applicants have cancelled Claims 6-8, 10, and 11 and amended Claims 1, 3, and 9. Claims 1, 3-5, and 9 are pending and are hereby reconsidered.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Abstract

In the abstract, line 1, insert ~~invention~~ between ~~The~~ and ~~provides~~.

Specification

Insert the following as the first sentence of the specification.

– This application is a national stage entry under 35 U.S.C. § 371 of PCT/US00/14489, filed May 25, 2000, which claims the benefit under 35 U.S.C. § 119(e) of U.S. Provisional Patent Application Serial No. 60/139,934, filed June 18, 1999.–

Authorization for this examiner's amendment was given in a telephone interview with Brian Dorn on March 29, 2006.

Allowable Subject Matter

Claims 1, 3-5, and 9 are allowed.

The following is an examiner's statement of reasons for allowance:

All elected Claims, 1, 3-5, and 9, are limited to polypeptides comprising a fragment of human myoD, as set forth by SEQ ID NO: 1, and methods of using said polypeptide to inhibit CDK4. The utility of said polypeptide, as having CDK4 inhibitor activity, is credible based on the following. The specification teaches that the analogous peptide from chicken, having 80% identity to the peptide of SEQ ID NO: 1, inhibits CDK4-dependent phosphorylation of RB (pg 36; Fig 13) and inhibits cellular growth (pg 37; Fig 12). Based on the fact that the peptide of SEQ ID NO: 1 is found in the same location within myoD as the analogous chicken, rat, murine, and pig peptides, SEQ ID NO: 1 contains the consensus sequence for said peptides (Fig 14), and SEQ ID NO: 1 has high homology with the chicken peptide, which has demonstrated CDK4 inhibitor activity, the person of ordinary skill in the art would believe that, more likely than not, the peptide of SEQ ID NO: 1 has CDK4 inhibitor activity.

The recited invention is free of the art. Although it was known, at the time of filing that myoD regulates CDK4 (Zang et al., 1999; see 892 of October 4, 2004), the art prior art does not teach the specific peptide set forth by SEQ ID NO: 1, or any analogous peptide, as a regulator of CDK4 (Zang et al., 1999; IDS of July 9, 2002).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1656


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan L. Swope whose telephone number is 571-272-0943.

The examiner can normally be reached on M-F; 9:30-7 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published application may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sheridan Lee Swope, Ph.D.
Art Unit 1656



SHERIDAN SWOPE, PH.D.
PRIMARY EXAMINER